

ORDERS FOR JULY 8, 1970

July 8, 1970

Order Appointing Marshal

It is ordered by the Court that Alfred Wang be, and he is hereby, appointed Marshal of this Court, effective

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REPORTER'S NOTE

The next page is purposely numbered 901. The numbers between 640 and 901 were intentionally omitted, in order to make it possible to publish the orders with *permanent* page numbers, thus making the official citations available upon publication of the preliminary prints of the United States Reports.

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Trustee Administrator of Philadelphia County, et al. Affirmed on appeal from D. C. E. D. Pa. *Phosor Parenthood of Central Missouri v. Desford*, ante, p. 62. Reported below: 491 F. Supp. 556.

Vacated and Remanded on Appeal

No. 75-705. Ben. Sweeney or Walker or Philadelphia, et al. v. Franklin et al. Appeal from D. C. E. D. Pa. Judgment vacated and case remanded for further consideration in light of *Phosor Parenthood of Central Missouri v. Desford*, ante, p. 62; *Singleton v. Wolf*, ante, p. 106; and *Thomas Shaw Board of Pharmacy v. Virginia Citizens Company*, Civil No. 425 U. S. 745. Mr. Justice Stewart and Mr. Justice Warren would vote probable jurisdiction and set case for oral argument. Reported below: 49 F. Supp. 524.

There has been an analogous alteration of the original intent regarding the area of state regulation at both law. Indeed, to the extent subsequent congressional action is probative at all, it shows a continuing intent to defer to the regulatory authority of the States over the areas and conditions of in-state interstate energy service. Thus, § 201 (a) of the Federal Power Act, 16 U.S.C. § 201 (a), provides in relevant part that "Federal regulation . . . shall be exercised only to those matters which are not subject to regulation by the States."

The Court's opinion, *inter alia*, suggests the clear evidence of congressional intent and substitutes its own policy judgment regarding the proper scope of federal regulation. It offers a view of policy of federal disposition over the regulation and control over interstate flow which is not only in conflict with the intent of the Act but also in violation of its minimum energy service standards. It creates a statutory mechanism of the substantive due process doctrine I thought had been put to rest long ago. The Court's approach anticipates the selective identification of those anti-competitive state regulatory measures that are deemed not "central" to the limited range of regulatory goals considered "imperative" by the Federal judiciary.

Henceforth, a state-regulated public utility company must at its peril sporadically divine which of its measures and interrelated tariff provisions a federal court will ultimately consider "central" or "imperative." If it guesses wrong it may be subjected to undue damages as a penalty for its compliance with state law.

<sup>1</sup> See Federal State Act on the Process and Authority of the Supreme in *Public's Power*, 70 Cal. J. Leg. 322 (1972).